

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MARGIE McRAE, ) CIVIL ACTION NO. 06-1999 MJJ  
Plaintiff, )  
vs. )  
JOANNE BARNHART, Commissioner of )  
the SOCIAL SECURITY )  
ADMINISTRATION, MARK W. EVERSON,)  
Commissioner of the INTERNAL REVENUE )  
SERVICE, KAREN GILES AND PHYLLIS )  
SCADUTO, )  
Defendants. )  
-----

RESPONSE TO MOTION TO  
DISMISS COMPLAINT UNDER  
FRCP 12(B)(5) FOR FAILURE  
TO SERVE  
AND  
MOTION FOR RULE 4(m) OR  
RULE 6(b)(2) ENLARGEMENT  
OF TIME

Date: November 14, 2006  
Time: 9:30 a.m.  
Place: Courtroom 11, 19<sup>th</sup> Floor  
450 Golden Gate Avenue  
San Francisco, CA  
Judge: Hon. Martin J. Jenkins

1.

Plaintiff objects to defendant's Motion to Dismiss based on Federal Rule of Civil Procedure 4(m), as the record does not support failure of service.

2.

Plaintiff filed this action on March 15, 2006 and amended the complaint on March 16, 2006.

Plaintiff made arrangements for personal service without delay. Global Messenger Corp., 1821 Washington Blvd, Baltimore, Maryland 21230, served the Attorney General at 950 Pennsylvania Avenue in Washington, D.C., the IRS Commissioner at 1111 Constitution Avenue in Washington, D.C., and the Social Security

Commissioner at 1508 Woodlawn Drive in Baltimore, Maryland, all on April 13, 2006.

Global Messenger Service is experienced in serving the Federal Government and was selected by plaintiff for that reason.

3.

Benny Jones, an Alameda County process server, served Karen Giles and Phyllis Scaduto on April 17, 2006. The five returns of service were personally filed with this court by plaintiff on April 28, 2006 along with the original summons, copies of which had been served with the complaint.

4.

On April 12, 2006, Carrie Hammer of the General Counsel's office in Baltimore called plaintiff and asked plaintiff not to directly contact Ms. Giles and Ms. Scaduto. Plaintiff explained to Ms. Hammer that she had served those defendants directly with the amended complaint only because no attorney had been identified at that time.

(Declaration of Margie McRae). Plaintiff explained that the call to her home, her unbuffered sanctuary, was stressful, and requested that future contact be made by mail. Ms. Hammer explained that she had access to plaintiff's telephone number because of plaintiff's work with the Social Security Administration. (Declaration of Margie McRae). Plaintiff, a physician, has always had a private, unlisted home telephone number and has always used a postal address, even before working for the California Department of Corrections, high risk employment enhancing the necessity for confidentiality and privacy. Plaintiff has never been on line and has no E-mail service. (Declaration of Margie McRae).

5.

In a letter dated May 5, 2006, Assistant U.S. Attorney Jonathan U. Lee advised plaintiff that she had "not properly served the United States or its agencies or employees." Though the Attorney General had been served, the United States Attorney for the district had not been served. On May 15, 2006, plaintiff served the Civil Process Clerk for the U.S. Attorney by certified mail and notified Assistant U.S. Attorney Jonathan U. Lee that she had done so in a letter on the same date (Exhibit A). It was signed for on May 16, 2006 and when the proof of delivery was returned, it was forwarded to this court by United States Postal Service Priority Mail with delivery confirmation on June 23, 2006 (Exhibit B).

A copy was subsequently sent to Attorney Lee, but apparently the enclosure was missing. Exhibit C is a copy of the United States Postal Service Certificate of Mailing from the second mailing to Attorney Lee.

6.

When plaintiff received defendant's Motion to Dismiss, she went to the court and learned that service on the Attorney General was in the case file, but not noted in the computer log. Apparently that was because the Attorney General was not a named defendant. The information has now been added to the computer log. (Declaration of Margie McRae).

7.

Plaintiff made several telephone calls to Attorney Lee, wrote letters, and even stopped by his office to arrange a schedule for "meet and confer". (Exhibit D).

Eventually, there was a meeting in the Federal Building in San Francisco and arrangements were made to meet again in early October to make initial disclosure. (Declaration of Margie McRae and Exhibit E).

8.

On October 2, 2006, plaintiff notified defendant that an answer was past due and requested an answer to avoid another Order to Show Cause (Exhibit E). Immediately thereafter, defendant filed this Motion to Dismiss.

9.

If personal service is precluded by Federal Rule of Civil Procedure 4, plaintiff's service may be defective, but Rule 4(m) is not to be construed harshly and the 120-day time limit is not absolute, *Commentary C4-38 to Federal Rule of Civil Procedure Rule 4(m)*, and the court is empowered to extend time, perhaps even if good cause is lacking, *Commentary C4-41 to Federal Rules of Civil Procedure Rule 4*. The court also is empowered to extend time under Rule 6(b)(2). Failure to prosecute is not the case here. The evidence shows that plaintiff has tried diligently to process this case, and plaintiff moves this court pursuant to Rules 4(m) and 6(b)(2) for an extension of time to serve defendants, again, by certified mail or registered mail if, and only if, the personal service for which she paid so much is prohibited by the Federal Rules of Civil Procedure.

BY: 

MARGIE McRAE, Plaintiff

Dated: October 28, 2006

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MARGIE McRAE,	)	CIVIL ACTION NO. 06-1999 MJJ
	)	
Plaintiff,	)	<b>RESPONSE TO MOTION TO</b>
	)	<b>DISMISS COMPLAINT UNDER</b>
vs.	)	<b>FRCP 12(B)(5) FOR FAILURE</b>
	)	<b>TO SERVE</b>
JOANNE BARNHART, Commissioner of	)	
the SOCIAL SECURITY	)	
ADMINISTRATION, MARK W. EVERSON,	)	
Commissioner of the INTERNAL REVENUE	)	
SERVICE, KAREN GILES AND PHYLLIS	)	
SCADUTO,	)	
	)	
Defendants.	)	
	)	

**AND**

**MOTION FOR RULE 4(m) OR  
RULE 6(b)(2) ENLARGEMENT  
OF TIME**

Date: November 14, 2006

Time: 9:30 a.m.

Place: Courtroom 11, 19<sup>th</sup> Floor  
450 Golden Gate Avenue  
San Francisco, CA

Judge: Hon. Martin J. Jenkins

**PROPOSED ORDER**

This court finds that plaintiff's personal service on the five parties meets the requirements of Rule 4 even though it is personal service rather than by mail.

Defendant's Motion to Dismiss is denied.

Dated:

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The Honorable Martin J. Jenkins  
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MARGIE McRAE, ) CIVIL ACTION NO. 06-1999 MJJ  
Plaintiff, )  
vs. )  
JOANNE BARNHART, Commissioner of )  
the SOCIAL SECURITY )  
ADMINISTRATION, MARK W. EVERSON,)  
Commissioner of the INTERNAL REVENUE )  
SERVICE, KAREN GILES AND PHYLLIS )  
SCADUTO, )  
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RESPONSE TO MOTION TO  
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450 Golden Gate Avenue  
San Francisco, CA  
Judge: Hon. Martin J. Jenkins

## **PROPOSED ORDER**

Plaintiff has made a good faith attempt at service on defendants. Personal service is not effective as service must be by certified or registered mail.

The evidence shows that plaintiff has been diligent in the prosecution of this case and this court finds good cause for granting an extension pursuant to Federal Rules of Civil Procedure Rule 4(m).

Dated:

**The Honorable Martin J. Jenkins  
United States District Court Judge**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MARGIE McRAE,	)	CIVIL ACTION NO. 06-1999 MJJ
	)	
Plaintiff,	)	<b>RESPONSE TO MOTION TO</b>
	)	<b>DISMISS COMPLAINT UNDER</b>
vs.	)	<b>FRCP 12(B)(5) FOR FAILURE</b>
	)	<b>TO SERVE</b>
JOANNE BARNHART, Commissioner of	)	
the SOCIAL SECURITY	)	
ADMINISTRATION, MARK W. EVERSON,	)	<b>AND</b>
Commissioner of the INTERNAL REVENUE	)	
SERVICE, KAREN GILES AND PHYLLIS	)	<b>MOTION FOR RULE 4(m) OR</b>
SCADUTO,	)	<b>RULE 6(b)(2) ENLARGEMENT</b>
	)	<b>OF TIME</b>
Defendants.	)	Date: November 14, 2006
	)	Time: 9:30 a.m.
		Place: Courtroom 11, 19 <sup>th</sup> Floor
		450 Golden Gate Avenue
		San Francisco, CA
		Judge: Hon. Martin J. Jenkins

**PROPOSED ORDER**

Plaintiff has made a good faith attempt at service on defendants. Personal service is not effective as service must be by certified or registered mail.

The evidence shows that plaintiff has been diligent in the prosecution of this case and this court finds good cause for granting an extension pursuant to Federal Rules of Civil Procedure Rule 6(b)(2).

Dated:

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The Honorable Martin J. Jenkins  
United States District Court Judge

# EXHIBIT A

Margie McRae  
Box 24818  
Oakland, CA 94623-1818

May 15, 2006

Jonathan U. Lee, Esq.  
Assistant U.S. Attorney  
Northern District of California  
10<sup>th</sup> Floor, Federal Building  
450 Golden Gate Avenue, Box 36055  
San Francisco, CA 94102-3495

Dear Mr. Lee:

I am in receipt of your letter dated May 5, 2006. Under separate cover, I have sent the complaint to the civil process clerk at the office of the United States Attorney, where you are located, by certified mail. You indicated that the United States has 60 days to answer, but it is my understanding that Social Security has 90 days.

My letter was sent to the employees because the District Court schedule is rather tight. I wanted to be in compliance, but had received no information as to the identity of the U.S. Attorney assigned to the case. I explained that to Carrie Hanmer when she called from the General Counsel's office in Baltimore on May 12.

We do need to meet and confer, to the extent possible, to adhere as closely as possible to the Court's schedule. I plan to be out of pocket for a while, but I shall retrieve any interval correspondence from you on my return.

For the initial document exchange, I want all the documents I requested in my FOIA request to the Social Security Administration, a copy of which will be sent to you when we set a schedule to meet and confer. You understand, surely, that comparative information is important in the

genre of cases.

It had been my plan to reserve a conference room in Oakland, but the civil tone of your letter makes me comfortable meeting at your facility, if you wish.

Enclosed is a copy of the packet I sent. I have no intent of further contact with the employees, now that I know you are the person to contact, as I know that would be improper.

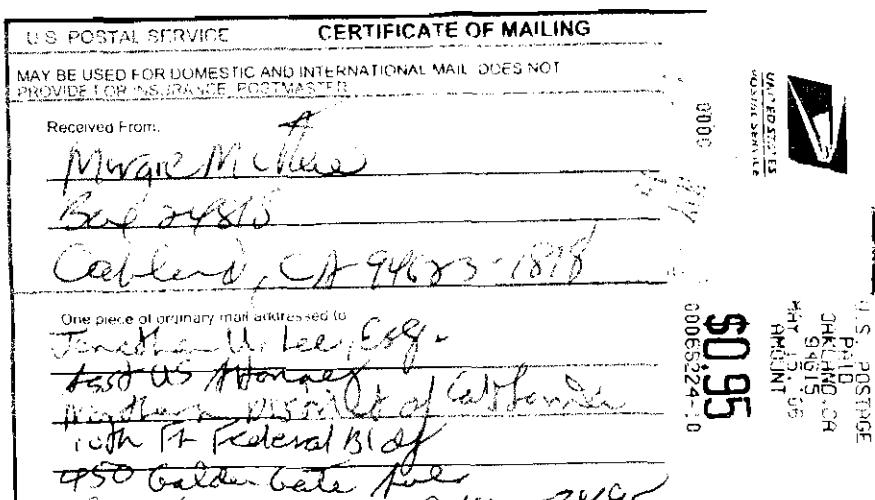
Please be reminded that I seek no monetary damages from the IRS, only an opinion as to my worker status.

Cordially,

H. A. See

Margie McRae, MD

Enclosures: 1. Complaint and Amended Complaint  
2. Meet and Confer letter



# EXHIBIT B

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

MARKUS MCKEE

### Plaintiff

3

SOCIAL SECURITY ADMINISTRATION,  
INTERNAL REVENUE SERVICE,

142 *Journal of Health Politics*

1990 MARCH 11-14, 1990, MUNICH, FRG

PLAINTIFFS RETURN OF SERVICE ON GOVERNMENT DEFENDANTS

Attached hereto is the return of service on the government agency defendants.

## IRS and Social Security Administration

13

MARGIE MCRAE, Plaintiff

Dated: June 21, 2006.

U.S. Postal Service Delivery Confirmation Receipt

Postage and Delivery Confirmation fees must be paid before mailing.

Artist's Statement: Can the community benefit from my artwork?

Return of Sample to Dr. [unclear]  
Post Office

DELIVERY CONFIRMATION NUMBER: 0305 2298 0000 2933 7403



PS Form 162 March 1969

**POSTAL CUSTOMER:**  
Keep this receipt. For inquiries: Access  
Internet web site at [www.usps.com](http://www.usps.com)  
or call 1-800-222-1811

Priority Mail  
 Standard Mail (B)

**SENDER: COMPLETE THIS SECTION**

- Enter items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

Address to:

111 process Clerk  
 Attorney's Office  
 Superior Court of California  
 455 Golden Gate Avenue, Room 2000  
 San Francisco, CA 94102-3875

Account Number (Copy from service label)

825 Form 3811, July 1999

**COMPLETE THIS SECTION ON DELIVERY**

A. Registered by (Please Print Clearly)	B. Date of Delivery
<i>100-446</i>	<i>7-16-99</i>
C. Signature	
<i>111 process Clerk</i>	
X	
D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
If YES, enter delivery address below	
<i>/</i>	

3. Service type
<input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail
<input type="checkbox"/> Registered <input type="checkbox"/> Insured Mail
<input type="checkbox"/> <i>10.00</i>

4. Restricted Delivery? (Extra Fee)  Yes

7005 1820 0005 0636 1575

Domestic Return Receipt

102506 99 M 1289

**U.S. Postal Service  
CERTIFIED MAIL RECEIPT  
(Domestic Mail Only. No International Coverage.)**

For delivery information visit our website at [www.usps.com](http://www.usps.com)

San Francisco CA 94102

Charge  \$4.00Handling  \$0.00Postage  \$0.00Delivery  \$0.00Registration  \$0.00Signature  \$0.00Delivery  \$0.00

**Margie McRae, M.D.**  
Box 24818  
Oakland, CA 94623-2828

**August 21, 2006**

**Jonathan U. Lee, Asst. U.S. Attorney**  
**Office of the U.S. Attorney**  
**450 Golden Gate Ave. - 11<sup>th</sup> Floor**  
**San Francisco, CA 94102-3495**

Dear Mr. Lee:

**Enclosed find proof of service on your office. Proof of service on the Attorney General was filed as was this document and can be found in the file if you have questions.**

Cordially,



**Margie McRae, M.D.**

# EXHIBIT C

U.S. POSTAL SERVICE	CERTIFICATE OF MAILING
MAY BE USED FOR DOMESTIC AND INTERNATIONAL MAIL. DOES NOT PROVIDE FOR INSURANCE. POSTMASTER	
Received From: <i>Mr. John B. Jeffers</i>	
Bog 24818	
Oaled, CT 99	
One piece of ordinary mail addressed to <i>Josephine Jeffers, Post, U.S. Post Office, Federal Bldg. 450 Calle de la Catedral San Juan, PR 00901-3340</i>	

PS Form 3817, January 2001

U.S. POSTAGE  
UNITED STATES POSTAL SERVICE

ACT COAL  
WCA BORNIA  
KONI

II. ACTION NO. 06-1999 MLI

100

700

PLAIN 1

## THE GOVERNMENT OF INDIA'S

April 6, 1972 hereto is the return of service on the government agency defendants.

## IRS and Social Security Administration

1

Chlorophyll a in the ocean

**U.S. Postal Service Delivery Confirmation Receipt**

**Postage and Delivery Confirmation fees must be paid before mailing.**  
**Article Sent To:** (to be completed by sender)

RECEIVED (ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED)

Letter of Service to be  
Notified

Delivery Confirmation Number: DD 1234 5678 9000 2933 7603

Postage and Delivery Conf.

Article Sent To: (to be completed)

*Return of Service*  
July 2008

USPS MAIL • Postage • Delivery • Service • Stamp

OKLAHOMA CITY, OKLAHOMA

JUN 23 2008

**POSTAL CUSTOMER:**  
Keep this receipt. For inquiries: Access internet web site at [www.usps.com](http://www.usps.com) or call 1-800-222-1811

**CHECK ONE (POSTAL USE ONLY)**

# EXHIBIT D

Margie McRae  
Box 24818  
Oakland, CA 94623-1818

June 10, 2006

**Jonathan U. Less, Esq.  
Assistant U.S. Attorney  
450 Golden Gate Avenue, 10<sup>th</sup> Floor  
San Francisco, CA 94102-3495**

Re: Case # 06-01999 MJJ

Dear Mr. Lee:

On June 9, I stopped in at your office because I was in the area. You were apparently in a deposition. I called on or about June 8. Clearly we can not meet the Court's schedule as your answer is not even due yet, so I shall ask for a continuance.

Kindly let me know if you are also representing IRS, as I have received no correspondence from them.

Cordially,

Margie McRae

Margie McRae  
Box 24818  
Oakland, CA 94623-1818

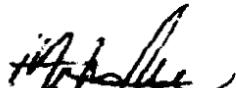
July 19, 2006

Jonathan U. Lee, Esq.  
450 Golden Gate Ave., 10<sup>th</sup> FL  
San Francisco, CA

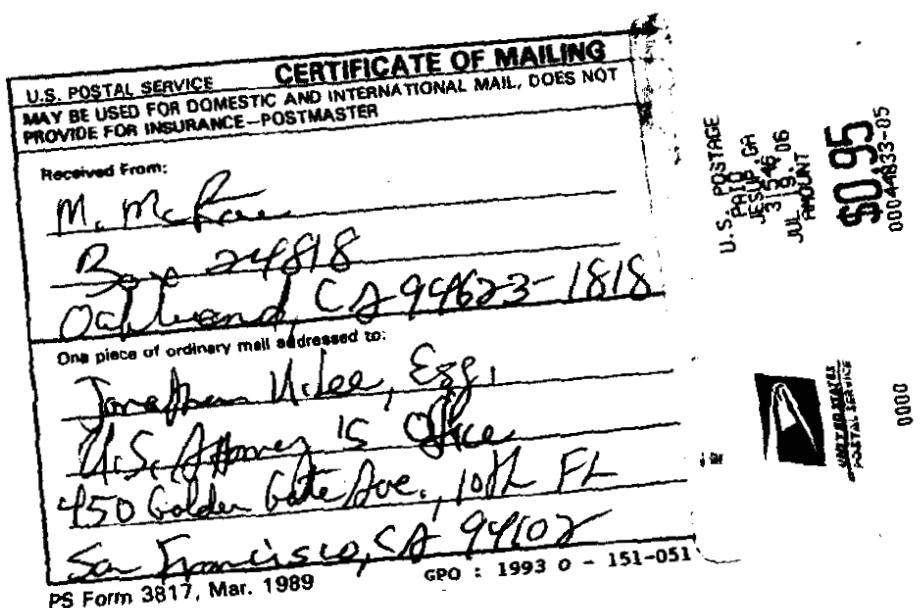
Dear Mr. Lee:

Your letter was received a few hours before I left town. I prefer to meet and confer in person and am willing to come to your office. Any time during the week of July 31 is fine. I prefer early morning to the extent possible.

Cordially,



Margie McRae



# EXHIBIT E

**Margie McRae, M.D.  
Box 24818  
Oakland, CA 94623-1818**

**October 2, 2006**

**Jonathan U. Lee, Asst U.S. Attorney  
Northern District of California  
450 Golden Gate Ave., 10<sup>th</sup> Floor  
San Francisco, CA 94102**

**Dear Mr. Lee:**

**Your answer is past due. I have already received an Order to Show Cause for not filing for default judgment. Please file your answer as soon as possible as I do not wish to receive another order.**

**We had planned to meet this month. Unfortunately, I have professional meetings and other commitments and the 13<sup>th</sup> is the only day I shall be available. We can meet very early in the morning or 1:00 p.m. or 4:30 p.m. If that does not work for you, the first part of November is available. Please let me know.**

**Your cooperation is appreciated.**

**Cordially,**



**Margie McRae, M.D.**

# Flat Rate Envelope

Case 3:07-cv-01538-MJ Document 11-3 Filed 07/02/2007 Page 22 of 23  
Flat Rate postage regardless of weight, destination or type of mailable material enclosed. Domestic use only.

DOMESTIC USE ONLY.

FLAT RATE ENVELOPE

Print Postage Online - Go to [www.usps.com/postageonline](http://www.usps.com/postageonline)

Recycled  
Paper

PLEASE PRESS FIRMLY

PLEASE PRESS FIRMLY

PLEASE PRESS FIR



U.S. POSTAGE  
PAID  
OAKLAND, CA  
94612  
OCT 28 2006  
AMOUNT

\$4.55  
00051603-05



[www.usps.com](http://www.usps.com)

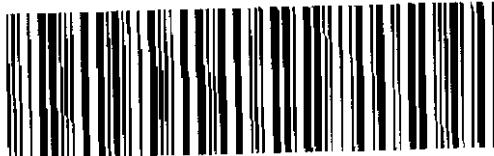
## HOW TO USE:



1. COMPLETE ADDRESS AREA  
Type or print return address and  
addressee information

United States Postal Service®

**DELIVERY CONFIRMATION™**



0306 1070 0002 3799 6524



4. Bring your Priority Mail package to  
a post office, present it to your letter carrier,  
or call 1-800-222-1811 for pick up service.  
Stampad mail may be deposited in a  
collection box **ONLY** if it weighs less  
than 16 ounces.

From:

McInerney (M)  
Bob 28818  
Oakland, CA 94623-1818

To:

Jonette U. Lee  
1087 U.S. Hwy  
10th Fl. Festival Blvdy  
450 Golden Gate Ave, Box 36053  
San Francisco, CA 94102-3493

▲ Complete address information or place label here ▲

**The convenient Flat Rate Envelope.**

One low price for fast delivery anywhere in the U.S., regardless of weight,